

# IN THE DISTRICT COURT OF ^ COUNTY, NEBRASKA

^,

Plaintiff^,

vs.

^,

Defendant^.

Case No. ^

## PROGRESSION ORDER

**DATE OF CONFERENCE:** ^.

**PLACE OF CONFERENCE:** Judge's chambers at Ainsworth, Nebraska, by telephone conference call.

### APPEARANCES:

For the plaintiff(s): ^.

For the defendant(s): ^.

1. **INTERNET HOME PAGE:** The court's Internet home page address is:  
**[www.nol.org/home/DC8/](http://www.nol.org/home/DC8/) or [www.dc8.state.ne.us](http://www.dc8.state.ne.us)**
2. **ADDITIONAL PARTIES:** After discussion between the court and counsel, it was determined that there are no additional parties which are necessary parties to the action or which are permissive parties that any party desires to join to the action. No motions to add or substitute parties will be considered hereafter except upon showing of good cause together with a showing that the existence of such good cause could not have been discovered in the exercise of reasonable diligence at the time of this progression conference.
3. **ADDITIONAL PARTIES:** After discussion between the court and counsel, it was determined that there may be additional parties which are necessary parties to the action or which are permissive parties that any party desires to join to the action. Any motions to add or substitute parties shall be filed on or before ^ and noticed for hearing in compliance with Rule 8-3 as soon as possible.
4. **JURY:** All counsel for the parties stipulated on behalf of their respective clients that the trial may be to a jury of seven persons, subject to the following:
  - A. No alternate need be selected, and in the event that one of the 7 jurors must be discharged prior to verdict, the trial or deliberations shall proceed with the remaining

- six jurors;
- B. The jury will be selected by drawing 15 persons for examination, and each side will be allowed 4 peremptory challenges after the panel is passed for cause;
  - C. All seven jurors will participate in the deliberations and verdict, except that after six hours of deliberations a verdict may be reached under the 5/6ths rule by the agreement of six jurors;
  - D. EXCEPT that if any party files a written request for 12-person jury with the court clerk within ^30 days from the date of the conference the trial shall be to a jury of 12 persons, with one or more alternates as determined by the court in the manner prescribed by law.
- 5. **JURY:** All counsel for the parties stipulated on behalf of their respective clients that the trial may be to the court without a jury, a jury being expressly waived.
  - 6. **JURY:** The parties elect a 12-person jury.
  - 7. **FINAL PRETRIAL CONFERENCE:** By further order upon disposition of pretrial motions or upon expiration of time for filing motions if none are filed, a final pretrial conference shall be held in the District Judge's chambers of the ^ County Courthouse in ^, Nebraska.
  - 8. **FINAL PRETRIAL CONFERENCE:** Unless continued by the court pending disposition of motions, a final pretrial conference shall be held on ^, at ^**m.**, or as soon thereafter as possible, in the District Judge's chambers of the ^ County Courthouse in ^, Nebraska.
    - A. Trial counsel shall appear with full authority to stipulate regarding disputed facts and to settle and compromise any claim or defense.
    - B. **If approval of any party or party representative is required for settlement, such party or representative shall personally attend the pretrial conference.**
  - 9. **TRIAL:** Trial shall be held as follows:
    - A. TYPE: The trial shall be to ^ (see ¶ 3 above).
    - B. DATE/TIME: The matter shall be placed on the trial calendar following the final pretrial conference.
    - C. PRIORITY: The case shall be heard at the first available trial session in order of priority by date of placement on trial calendar, except that criminal cases shall have first priority for trial, and civil cases having statutory priority shall be advanced for trial prior to cases not having statutory priority. The status of the court's trial

calendar, kept continually current, may be viewed on the court's Internet site.

10. **PLEADINGS:**

A. OPERATIVE: The operative pleadings on file at the time of the conference are:

- (1) COMPLAINT: The ^ complaint filed on ^.
  - (a) ANSWER: The ^ answer filed on ^.
  - (b) ANSWER: The ^ answer(s) of:
    - 1) ^ filed on ^.
  - (c) REPLY: The ^ reply filed on ^.
  - (d) REPLY: The ^ reply of:
    - 1) ^ filed on ^.
- (2) COUNTERCLAIM: The ^ counterclaim of ^ filed on ^.
  - (a) ANSWER: The ^ answer filed on ^.
  - (b) ANSWER: The ^ answer(s) of:
    - 1) ^ filed on ^.
  - (c) REPLY: The ^ reply filed on ^.
  - (d) REPLY: The ^ reply of:
    - 1) ^ filed on ^.
- (3) CROSS-CLAIM: The cross-claim of ^ filed on ^.
  - (a) ANSWER: The ^ answer filed on ^.
  - (b) ANSWER: The ^ answer(s) of:
    - 1) ^ filed on ^.
  - (c) REPLY: The ^ reply filed on ^.
  - (d) REPLY: The ^ reply of:
    - 1) ^ filed on ^.
- (4) THIRD-PARTY COMPLAINT: The third-party complaint of ^ filed on ^.
  - (a) ANSWER: The ^ answer filed on ^.
  - (b) ANSWER: The ^ answer(s) of:
    - 1) ^ filed on ^.
  - (c) REPLY: The ^ reply filed on ^.
  - (d) REPLY: The ^ reply of:
    - 1) ^ filed on ^.

- B. AMENDMENT(S) NOW: By agreement of counsel and without necessity of formal motion granting leave therefor, the ^ shall be allowed to file a(n) ^ on or before ^.
  - (1) The ^ shall have ^ days thereafter to ^.
  - (2) The ^ shall have ^ days thereafter to ^.
  - C. LATER AMENDMENTS: Amendments not requiring leave shall be served in sufficient time that such service and service of any required responsive pleading(s) will be completed at least 30 days prior to the completion of discovery. All motions for leave to amend shall be noticed for hearing in compliance with Rule 8-3 in sufficient time that service of such amended pleading and service of any required responsive pleading(s) can be accomplished at least 30 days prior to the completion of discovery.
  - D. UNTIMELY MOTIONS: Motions for leave to amend pleadings filed after such date will be summarily denied unless accompanied by a showing:
    - (1) that the granting of the motion will not delay progression to the final pretrial conference, or,
    - (2) of cause why the motion could not have been timely filed in the exercise of reasonable diligence, including but not limited to prompt pursuance of discovery.
11. **DISCOVERY:** After discussion among the court and counsel, the court finds that the general discovery completion date (“the completion date”) of ^, constitutes a reasonable time for the completion of discovery, and hereby orders that all discovery shall be completed by that date, as follows:
- A. WRITTEN DISCOVERY: All interrogatories, requests for admission or requests for the production of documents and for inspection shall be served upon the other parties in sufficient time such that answers thereto may be submitted under normal discovery rule time limits by the completion date.
  - B. SUPPLEMENTAL ANSWERS: All supplemental answers to previously served interrogatories or requests for admission shall be served upon the other parties by the completion date.
  - C. DEPOSITIONS: All depositions shall be taken by the completion date.
  - D. PHYSICAL AND MENTAL EXAMINATIONS: All requests for a physical or mental

examination shall be submitted in sufficient time that any necessary hearing may be held and the examination conducted and completed by the completion date.

- E. **EXTENSION OF DISCOVERY TIME:** The times for discovery may be extended by the stipulation of the parties, without permission of the court, if the extension will not delay any trial or the progression of the case toward trial, and the time for discovery will be extended by the court only after motion and hearing, upon the showing of good cause.

12. **WITNESSES:**

- A. **AUTOMATIC DISCLOSURES:** Within ^ days from the date of this progression conference, each party shall, without request from any party, serve upon all other parties identification by name and address of all persons likely to have information which bears significantly on the claims and defenses in the case, to the extent not previously provided through discovery.
- B. **FINAL LIST PRODUCED:** At the final pretrial conference, each party shall submit to the Court (**not** file with the court clerk), and serve on all other parties, a list of witnesses showing **specific** name, address, and telephone number. Any witness listed thereon, but not previously disclosed by any party pursuant to paragraph A above, shall be further identified by a summary of the testimony of such additional witness. After that date, witnesses may be added to the witness list only with the permission of the court given after showing of good cause.
- C. **ADDITIONAL WITNESSES:** Except rebuttal witnesses not now known, neither party may call as a witness at trial any person that is not on any one or more of the final witness lists (without regard to the identity of the party submitting the list).

13. **EXHIBITS:**

- A. **AUTOMATIC DISCLOSURES:** Within ^ days from the date of this progression conference, each party shall, without request from any party, serve upon all other parties a photocopy of, or a description by category and location of, all documents, data, compilations, and tangible things in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense in the case, to the extent not previously provided through discovery.
- B. **FINAL LIST PRODUCED:** At the final pretrial conference, each party shall submit

to the Court (**not** file with the court clerk), and serve on all other parties, a list of exhibits showing **specific** description thereof. Any exhibit listed thereon, but not previously disclosed by any party pursuant to paragraph A above, shall be further identified by furnishing a photocopy thereof to all other parties unless photocopying the exhibit is impractical or unduly expensive. After that date, exhibits may be added to the exhibit list only with the permission of the court given after showing of good cause.

- C. **ADDITIONALEXHIBITS:** The parties are limited to the exhibits on any one or more of the final exhibit lists (without regard to the identity of the party submitting the list).
  - D. **NONDOCUMENTARY/OVERSIZE EXHIBITS:** Pursuant to Supreme Court rule:
    - (1) The party offering any nondocumentary item of physical evidence shall provide a photograph, not exceeding 8½ by 11 inches and which fairly and accurately depicts the item, to the court reporter at the time the original exhibit is marked.
    - (2) The party offering any documentary item of evidence exceeding 8½ by 11 inches shall provide a reduced size photographic copy or photograph, not exceeding 8½ by 11 inches and which fairly and accurately depicts the item, to the court reporter at the time the original exhibit is marked.
    - (3) The court reporter shall refuse to mark and the Court may refuse to accept any such item submitted but not accompanied by such copy or photograph.
  - E. **MARKING EXHIBITS:** All exhibits shall be marked by the official court reporter (“reporter”). Counsel shall not pre-mark exhibits except after consultation with and obtaining approval of the reporter. Counsel shall appear at least 30 minutes prior to trial to present exhibits to the reporter for marking, unless counsel has made advance arrangements with the reporter for pre-marking of exhibits. If exhibits are too numerous to be marked within such 30 minute period, counsel shall make advance arrangements with the reporter for pre-marking of exhibits. Except for matters arising during trial which could not reasonably have been foreseen, all exhibits shall be marked prior to the commencement of trial.
14. **FOUNDATION:** Specific objections to foundation for exhibits shall be raised by the parties at the pretrial conference, or the foundational objection shall be considered waived at time

- of trial. At the pretrial conference, exhibits will be classified into the following categories:
- A. Category “A” exhibits will be those for which the parties waive all objections and stipulate that the same may be admitted without objection upon offer by either party.
  - B. Category “B” exhibits will be those for which the parties waive foundation and stipulate that the same may be admitted without foundation, but reserve any other objection to them.
  - C. Category “C” exhibits will be those for which no objections are waived, and to which specific foundational objection(s) is/are asserted at the pretrial conference.
15. **STIPULATIONS:** The parties shall attempt to stipulate to all agreed facts in writing, which stipulation shall be submitted to the Court (**not** filed with the court clerk) at the pretrial conference. In the event that no facts can be stipulated to by the parties, the parties shall each submit separate proposed stipulations to the Court at the pretrial conference.
16. **TRIAL PROCEDURES:** At the final pretrial conference, trial procedures will be considered. In addition to any other matters which may be raised by the parties or counsel, the court will consider procedures regarding:
- A. Requests for record of portion of trial for which no verbatim record is required by Supreme Court Rule 5A(1) of Practice and Procedure.
  - B. Note taking by jurors, if applicable.
  - C. Any requests for sequestration of witnesses.
  - D. Procedures for use of any videotape depositions.
  - E. Procedures for requesting permission to approach witnesses or the official court reporter.
  - F. Use of formal titles to address counsel, witnesses, and jurors.
  - G. Prohibition against speaking to venirepersons or jurors.
  - H. Prohibition against entering judge’s chambers ex parte during trial.
  - I. Itemizations of costs.
17. **ISSUES:** Each party shall submit (**not** file) a list of disputed factual and legal issues at the pretrial conference. Such list shall be in the form of the **legal elements of each claim or defense**, and the contested factual issues as to each element of the claim or defense.
18. **PRETRIAL MOTIONS:**
- A. All pretrial motions, including, without limitation, motions for summary judgment and

motions in limine, not otherwise provided for above, shall be filed on or before ^, and noticed for hearing **prior to** the date of the pretrial conference in compliance with Rule 8-3.

B. Briefs in support of motions for summary judgment, motions for partial summary judgment, or motions in limine shall be served and submitted as follows:

- (1) Any moving party who desires to submit a brief in support of the motion shall serve the brief in support on opposing counsel at the time of filing and service of the motion. Failure to serve a brief in support with the motion shall be deemed as a waiver of the right to submit such brief.
- (2) If the nonmoving party desires to submit a brief in opposition to the motion, such brief shall be served on opposing counsel at or prior to the hearing on the motion. Unless the nonmoving party moves for continuance of the hearing with supporting affidavit(s), failure to serve a brief in opposition at or prior to date of hearing shall be deemed as a waiver of the right to submit such brief.
- (3) Any reply brief in support of the motion shall be served within 5 days after the date of hearing on the motion.
- (4) Pursuant to Uniform District Court Rule 5B, all briefs shall be submitted to the trial judge and shall **not** be filed with the court clerk. The preferences for delivery set forth below for trial briefs shall apply here, except that initial briefs in support and briefs in opposition need not be actually delivered to the judge until the date of hearing on the motion.

C. The parties are cautioned that the court, on its own motion, may consider the pendency of a nonfrivolous pretrial motion as a sufficient ground for continuance of the pretrial conference until the motion has been decided.

19. **REQUESTED JURY INSTRUCTIONS:**

- A. All requested jury instructions shall be submitted in sufficient time that the same shall be **received** by the Judge in chambers at least 10 days prior to trial.
- B. The court's preferences for delivery are set forth below. Copies of requests for instructions shall be served on opposing counsel.
- C. Standard NJI or NJI2d instructions with no requested deviations or specific additions may be requested by reference to the **instruction number and title** only.

- D. The instructions required by this paragraph are for the assistance of the court and to enable the parties to have the best possible chance of having instructions tendered in the language desired by the parties. The court will **not** file these instructions with the clerk. The formal request for instructions not included in the court's draft instructions shall be filed with the clerk. Counsel should avoid formal filing with the clerk prior to the formal instruction conference so as to avoid unnecessary filings in the court file.
20. **TRIAL BRIEFS:** All trial briefs shall be submitted in sufficient time that the same shall be **received** by the Judge at least 10 days prior to trial. All briefs shall be submitted to the Judge, **not** filed with the clerk (see Uniform District Court Rule 5B). Copies shall be served on opposing counsel.
21. **DELIVERY PREFERENCES:** The court's preferences for methods of delivery of jury instructions (if applicable) and trial briefs are:
- (1st) by electronic mail (as attachment of word processing file) to Internet address — cassel08@nol.org (note that 08 following cassel are numeric while all others are alphabetic);
  - (2nd) on CDROM or 3.5" floppy diskette (prefer WordPerfect format) by personal delivery or by mail to P.O. Box 105, Ainsworth, NE 69210-0105;
  - (3rd) hard copy by personal delivery or by mail to P.O. Box 105, Ainsworth, NE 69210-0105.
22. **OBJECTIONS:** The parties are allowed ten (10) days from the mailing of a copy of this order to them to file written objections to this order with the court clerk. A hearing will be held on any objections as noticed for hearing in compliance with Rule 8-3. Any objection not noticed for hearing in compliance with Rule 8-3 may be denied without a hearing.

Signed in chambers at **Ainsworth**, Nebraska, on ^;  
 DEEMED ENTERED upon file stamp date by court clerk.  
 If checked, the court clerk shall:

BY THE COURT:

- ☒ Mail a copy of this order to all counsel of record and any pro se parties.  
 Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- ☐ Note the decision on the trial docket as: [date of filing] **Signed "Progression Order" entered; pretrial conference to be set upon disposition of motions due on or before** [date from order].  
 Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- ☐ Note the decision on the trial docket as: [date of filing] **Signed "Progression Order" entered; pretrial conference scheduled for** [date from order] **at** [time from order].  
 Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

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William B. Cassel  
 District Judge

Mailed to: